

Exhibit B

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC.,)

)

Plaintiff,)

)

v.)

)

SAMSUNG ELECTRONICS CO., LTD,)

et al.,)

)

Defendants.)

Civil Case No.

2:22-cv-00293-JRG

(Lead Case)

NETLIST, INC.,)

)

Plaintiff,)

)

v.)

)

MICRON TECHNOLOGY TEXAS, LLC,)

et al.,)

)

Defendants.)

Civil Case No.

2:22-cv-00294-JRG

(Member Case)

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TRANSCRIPT OF REMOTE PROCEEDINGS
BEFORE SPECIAL MASTER JUDGE DAVID FOLSOM
FRIDAY, JANUARY 5, 2024

Reported by:

Lena Mescall, CSR No. 13018, RPR

Job No. 6388749

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TRANSCRIPT OF REMOTE PROCEEDINGS before
Special Master Judge David Folsom, beginning at
8:07 A.M. and ending at 10:05 A.M., on Friday,
January 5, 2024, by Lena Mescall, Certified Shorthand
Reporter No. 13018, RPR.

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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(None)

EXHIBITS

NUMBER	MARKED AND RECEIVED
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(None)

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1 REPORTED REMOTELY FROM IRVINE, CALIFORNIA;

2 FRIDAY, JANUARY 5, 2024, 8:07 A.M. TO 10:05 A.M.

3
4 SPECIAL MASTER FOLSOM: Well, I think it'll be
5 helpful -- and perhaps you've already given the -- Madam
6 Court Reporter benefit of your name and who you
7 represent -- but I think it would be helpful to go
8 around the room and provide an introduction and which
9 party you represent. Mr. Nilsson, Will Nilsson, is
10 appearing -- for those of you were not at the initial
11 counsel-only session, Will, former law clerk for
12 Judge Gilstrap and an associate of Jackson Walker -- he
13 is assisting me with this matter.

14 So with that, I guess, we can start with
15 introductions from Plaintiff, and then we will go to the
16 two Defendants. And then I have a few comments, then we
17 will start the work of the day.

18 MS. TRUELOVE: Thank you, Your Honor.

19 Jennifer Truelove on behalf of the Plaintiff,
20 Netlist. Joining me today is Mr. Jason Sheasby,
21 Sam Baxter, Stephen Payne, Michael Tezyan, Isabella
22 Chestney, and David Kahn.

23 We are ready to proceed.

24 SPECIAL MASTER FOLSOM: Very well.

25 MS. SMITH: Your Honor, Melissa Smith, on

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1 behalf of Samsung. I'm joined by Mr. Mike McKeon,
2 Mr. Ruffin Cordell, Ms. Lauren Degnan, Mr. Daniel
3 Tishman, and Mr. Leonard Davis. I think I got everybody
4 in. We're ready to proceed, Your Honor.

5 MR. CORDELL: And just one addition. I think
6 we have Amy Lucas from O'Melveny on as well.

7 SPECIAL MASTER FOLSOM: Very well.

8 Additional introductions?

9 MR. RUECKHEIM: Mr. Doan, do you want me to do
10 it for Micron?

11 SPECIAL MASTER FOLSOM: Yes, please.

12 MR. RUECKHEIM: Mike Rueckheim for Micron
13 Defendants. With me is Mr. Doan and Mr. Park.

14 SPECIAL MASTER FOLSOM: Very well.

15 Well, welcome, everyone. For the benefit of
16 the court reporter, at least on my screen, you don't
17 have a name appearing. So it might be helpful, for
18 those of you that are presenting motions, responses,
19 that you identify yourself for the record.

20 Madam Court Reporter, if you have difficulty
21 understanding any of us, don't hesitate to interrupt and
22 let us know. I appreciate everyone attending today.

23 We are here pursuant to a couple of orders
24 entered by Judge Gilstrap, the initial order
25 December 22nd of 2023, appointing me special master to

1 oversee a group of pending discovery motions. And then
2 a second order was entered January 2nd of 2024, adding
3 some additional motions to the list. I appreciate your
4 efforts in trying to narrow the issues. I received
5 yesterday afternoon the joint status report, sort of,
6 read like no one wanted to miss another opportunity to
7 brief a little more.

8 So in any event, I appreciate those efforts. I
9 think I have a feeling of the -- feel for the issues
10 that are in the case. I trust the joint status report
11 has been filed of record; is that correct? If not, are
12 you anticipating -- anticipating filing that joint
13 status report?

14 MR. SHEASBY: Your Honor, we will file it. I
15 don't know --

16 SPECIAL MASTER FOLSOM: I think it needs to --
17 since there are a number of agreements that are set
18 forth, I would recommend that the status report be
19 filed. I don't know if it needs to be filed under seal
20 or not. I am open to thoughts in that regard. But I
21 think it needs to be part of the record in some fashion,
22 either attached to the transcript in this case or filed
23 among the papers of these matters.

24 Any thoughts in that regard?

25 MR. SHEASBY: Jason Sheasby for Netlist. We

1 agree, Your Honor.

2 MR. CORDELL: And Ruffin Cordell for Samsung.

3 We agree.

4 MR. RUECKHEIM: Mike Rueckheim for Micron.

5 Same.

6 SPECIAL MASTER FOLSOM: Well, thank you. It's
7 my understanding that -- make sure I sort of understand
8 the time frame under which I am operating that there's a
9 Netlist-Micron case scheduled for the 22nd that's second
10 on the trial order. But my understanding, the motions
11 involved in the referral are not implicated in that
12 case; is that correct?

13 MR. SHEASBY: Jason Sheasby for Netlist.
14 That's correct, Your Honor, as far as we are concerned.

15 SPECIAL MASTER FOLSOM: Very well. Then
16 needless to say, I will use all due speed to try to have
17 out an order on these matters. I just wanted to make
18 sure that I was correct on my understanding of the
19 motions as they relate to the case on the January 22nd
20 docket.

21 I don't have any particular preference on the
22 order these motions are addressed. Have the parties
23 given any thought to how the motions will be addressed?
24 Can some of them be grouped? For those of you that were
25 not on the counsel-only Zoom session back in December, I

1 brought up the topic of time limits, and I was assured
2 that it would not be necessary, that everyone would use
3 all due speed. Perhaps I should have probed a little
4 more fully about what that means. I would hope we can
5 address these motions by noonish Central Time, but,
6 again, I'll try to be liberal. I thought, unlike the
7 briefing schedule, I would allow for motion response and
8 a brief reply, unless the parties have agreed to the
9 contrary.

10 MR. SHEASBY: Your Honor, this is Jason Sheasby
11 for Netlist.

12 It seems that there are a relatively small
13 number of Micron motions and a substantially larger
14 number of Samsung motions. I wonder if, in light of
15 that, we should take up Micron's first, so that they
16 don't have to attend a full hearing, if they have other
17 things to do today.

18 SPECIAL MASTER FOLSOM: That's agreeable with
19 me, and I actually gave some thought to that. But my
20 guess, though, you want to stay for the full show, so to
21 speak. But we can take those up first and then allow
22 Counsel in that part of the case to depart, if you wish,
23 or you're welcome to stay, one of the two.

24 By the way, at least for the purpose of the
25 record, I had a couple of calls from a gentlemen wanting

1 to attend the hearing, wanting the Zoom link. That's
2 why Mr. Nilsson circulated the email to the parties.
3 And I understand almost everything is subject to a
4 protective order. So I explained to him yesterday -- he
5 called back -- that in all likelihood, the entire
6 hearing would be closed. I just at least wanted to
7 report that to the parties. That's what generated the
8 email from Mr. Nilsson. I had an inquiry in that
9 regard.

10 I don't -- needless to say, I don't know if we
11 have any corporate representatives. They're, of course,
12 welcome subject to whatever provisions are in place on
13 the protective order.

14 Counsel for Micron, is it agreeable with you to
15 start with your group of motions or motions that you're
16 responding to?

17 MR. RUECKHEIM: Mike Rueckheim for Micron.
18 Absolutely. I'm happy to.

19 SPECIAL MASTER FOLSOM: Very well. Why don't
20 we start the work of the day then.

21 MR. RUECKHEIM: Okay. Mike Rueckheim for
22 Micron again.

23 I'm assuming, Jason, you want to go in order of
24 the docket? So your motion first.

25 MR. SHEASBY: Okay. So I believe the first one

1 is our motion to compel interrogatory responses.

2 MR. RUECKHEIM: I have Docket 220.

3 SPECIAL MASTER FOLSOM: Yeah. In that regard,
4 I think it would be helpful, as the day goes on or the
5 morning goes on, I know a number of these motions are --
6 have been on the docket for a number of months. A
7 number of the motions were filed before the expert
8 reports were filed. And maybe that's all been addressed
9 by the joint status report, but I think it would be
10 helpful, if there's an interplay between the expert
11 reports or rebuttal reports of these motions, that that
12 be addressed.

13 MR. SHEASBY: Thank you, Your Honor.

14 Yes. For the -- with the Court's permission,
15 we'll start with Docket 220 --

16 SPECIAL MASTER FOLSOM: 220. Okay.

17 MR. SHEASBY: -- which is Netlist's motion to
18 compel production of Micron documents relevant to
19 damages.

20 SPECIAL MASTER FOLSOM: You may go forward.

21 MR. SHEASBY: I won't be arguing that.

22 SPECIAL MASTER FOLSOM: Okay. Well --

23 MR. SHEASBY: Mr. Payne, who's -- I believe
24 it's -- do you have a list of who is arguing?

25 MR. PAYNE: Ms. Chestney will be arguing that

1 for Netlist.

2 MS. CHESTNEY: Yes. That will be me.

3 May I proceed, Your Honor?

4 SPECIAL MASTER FOLSOM: Yes, you may.

5 MS. CHESTNEY: Thank you. Isabella Chestney
6 for Plaintiff Netlist.

7 So, Your Honor, this motion is basically just a
8 dispute over four different categories of documents that
9 Netlist is seeking to have Micron produce that it hasn't
10 yet produced. I am going to start with the third
11 category of documents, because I think that's the most
12 outstanding of Netlist's request. So, essentially, what
13 Netlist is seeking in this request is just that Micron
14 produce records showing the locations where it designed
15 and developed the accused products and the locations
16 where it tracks certain features of the accused
17 products.

18 At this point, we are basically just seeking
19 that Micron produce records of where it has qualified
20 the accused products --

21 SPECIAL MASTER FOLSOM: Where what -- I didn't
22 understand that last --

23 MS. CHESTNEY: Sorry. So where a qualification
24 has occurred for the accused products. So qualification
25 is basically just where Micron ships the -- ships

1 samples of the accused products for testing to its
2 customers.

3 SPECIAL MASTER FOLSOM: And why is that kind of
4 record relevant to the issues in the case?

5 MS. CHESTNEY: Well, so, Your Honor, the
6 parties had a similar dispute in the previous case or
7 the parallel case between Netlist and Micron in the
8 Eastern District of Texas. And there the Court ordered
9 the production of the qualification records already.
10 And Micron produced those records in that case as the
11 accused products there.

12 SPECIAL MASTER FOLSOM: Is that Judge Payne's
13 order? Is that correct?

14 MS. CHESTNEY: Yes. And, essentially, the
15 locations where qualifications occur are relevant
16 because they go to whether or not a product might
17 have -- a sale of a product might have U.S. nexus or
18 whether there was infringing activity occurring in the
19 United States. There's Federal Circuit case law,
20 Carnegie Mellon v. Marvell, holding that the locations
21 of qualifications and -- many different activities
22 related to the sale of a product are relevant to
23 establishing a U.S. nexus of infringing activities or
24 sales.

25 So, essentially, the Court in the Eastern

1 District of Texas has already determined that these
2 documents are relevant. They've ruled that those
3 documents are relevant there and Micron produced them.
4 And Micron hasn't given us a reason why it would be more
5 burdensome in this case or less relevant in this case to
6 produce the same documents for the accused products
7 here. So that's basically, at this point, what we're
8 seeking for that request.

9 SPECIAL MASTER FOLSOM: Okay. I think it'd be
10 helpful, so we have with this all in close context in
11 the record, to have a response on that issue, and then
12 you can reply briefly. Who will be --

13 MR. RUECKHEIM: Mike Rueckheim for Micron.

14 I wanted to jump in. We actually talked
15 about -- it seems like the issues with motion Docket 220
16 have now boiled down to or narrowed down to
17 qualification documents as Ms. Chestney said. We had a
18 meet-and-confer about this the other day, and there's a
19 discussion that, in our prior case, Micron produced an
20 intel spreadsheet that had certain qualification
21 information. And we agreed to produce that information
22 here. Looks like we didn't produce it for one of the
23 accused products, and so we will produce it.

24 SPECIAL MASTER FOLSOM: Okay. Does that take
25 care of this issue?

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1 MS. CHESTNEY: It does, Your Honor.

2 SPECIAL MASTER FOLSOM: Very well. Let's go on
3 to the second issue then.

4 MS. CHESTNEY: Okay. So for that one, I'm
5 going to be going to the fourth category of documents
6 because, likewise, that's a category the parties have
7 disputed more in the recent meet-and-confer. So
8 similarly for that one, Netlist has already received the
9 categories of documents that it requests from Micron.
10 And they're listed on page 5 and 6 of the motion. What
11 Netlist is seeking is just that -- so, basically, Micron
12 has produced these categories of documents, but it
13 hasn't produced a complete record of them. So they have
14 shown some of the records, but they haven't produced --

15 SPECIAL MASTER FOLSOM: What do you mean not a
16 complete record? What do you mean by that?

17 MS. CHESTNEY: So, basically, they produced,
18 for example, CNBU, which is a computer networking
19 business unit -- they produced, for example, roadmap --
20 roadmaps, product architecture documents, business
21 plans, quarterly and annually. They produced some of
22 those, showing that they keep records of these kinds of
23 things, but they haven't produced them for all of the
24 accused products. So they haven't produced a complete
25 set of them for --

1 SPECIAL MASTER FOLSOM: So it's not a certain
2 period of time. It's a category of accused products
3 that haven't been produced?

4 MS. CHESTNEY: Yes.

5 SPECIAL MASTER FOLSOM: Okay. What's the
6 response on that?

7 MR. RUECKHEIM: Mike Rueckheim again for
8 Micron.

9 Your Honor, so this actually goes back to
10 exactly what Ms. Chestney had mentioned previously. The
11 parties had disputed a large number, very large number
12 of discovery disputes in our first litigation, the one
13 going to trial in January in a couple of weeks. And
14 Judge Payne put reasonable limits upon the discovery
15 request. We put in our opposition, just the page --
16 pages of document requests and request for information
17 that Netlist had asked for and Judge Payne ordered
18 specifically. And it looks like it's Docket 123, is
19 that order in our Case 2 or 3 exactly what Micron should
20 produce, and we did produce that, as Ms. Chestney said.

21 SPECIAL MASTER FOLSOM: So you produced in
22 Case 2 what you were ordered to produce in Case 1;
23 correct? Is that what you're saying?

24 MR. RUECKHEIM: Exactly. Correct, Your Honor.

25 SPECIAL MASTER FOLSOM: So you're saying the

1 additional request is overbroad?

2 MR. RUECKHEIM: Overbroad. They've had witness
3 testimony. These are really related to marketing, I
4 think, topics -- witness testimony on marketing topics.
5 They've had our technical document production. We
6 produced everything the Court, in the prior case, asked
7 us to produce. And what they are asking for now is
8 overbroad.

9 SPECIAL MASTER FOLSOM: Very well. Why is the
10 additional information required if they have complied
11 with Judge Payne's order in Case 1, I guess, is my
12 question?

13 MS. CHESTNEY: Thank you, Your Honor.

14 So, basically, if Micron -- we're really
15 looking for a statement that either Micron, all the
16 documents that have been produced -- sorry -- are
17 either -- either have been produced by Micron at this
18 point in time relevant to the accused products. We are
19 just trying to make sure they haven't withheld any. So,
20 basically, they have produced the documents that are
21 listed in that -- in the motion, but it looks like, to
22 us, there are documents missing related to the accused
23 products. But if Micron attests that they have, in
24 fact, produced all of those documents relevant to the
25 accused products, as Judge Payne ordered in the first

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1 case -- and that includes all marketing documents
2 related to the accused products, because we think those
3 are pretty plainly relevant for showing the benefits of
4 the accused products, sales of the accused the products,
5 things like that. So if they have produced all of those
6 for the accused products, then -- then the motion is
7 resolved to that extent, but --

8 SPECIAL MASTER FOLSOM: Just --

9 MS. CHESTNEY: It's just not totally clear to
10 us.

11 SPECIAL MASTER FOLSOM: So, Micron, have you
12 produced all the documents consistent with Judge Payne's
13 order in Case No. 1?

14 MR. RUECKHEIM: Absolutely, Your Honor.

15 SPECIAL MASTER FOLSOM: Okay. So does that
16 resolve this one?

17 MS. CHESTNEY: Yes, it does, Your Honor.

18 SPECIAL MASTER FOLSOM: Very well. Good. We
19 are making progress.

20 MS. CHESTNEY: And, actually, the other two can
21 probably also proceed fairly quickly. The other two
22 requests, Requests No. 1 and 2, because for those, we
23 are also similarly kind of just looking for a definitive
24 statement from Micron that either they have, indeed,
25 produced all of the shipment records. So the first

1 request relates to shipment records of the accused
2 products, and we -- so Judge Payne held in the first
3 case that the shipment records of any products that pass
4 through the United States are relevant, as well as
5 products that end up in the United States. And so
6 Micron stated in their motion that they went through
7 their records to determine that there are no records of
8 any products that, for example, ended up in South
9 America and were shipped from somewhere else but passed
10 through the United States. And so we are either looking
11 for production of evidence that that's the case or
12 looking for just a clear statement from them that there
13 are indeed no records and they have investigated and
14 determined that.

15 SPECIAL MASTER FOLSOM: Response?

16 MR. RUECKHEIM: Your Honor, once again, Netlist
17 is asking for a whole host of different issues above and
18 beyond what Judge Payne ordered produced in the last
19 case. As Ms. Chestney said, we did. They -- now
20 Netlist has another question. Do you ship any products
21 into the United States where shipment -- start with the
22 United States. The ones where Judge Payne asked us to
23 produce, we answered it. We answered it in our motion.
24 We are fine answering that --

25 SPECIAL MASTER FOLSOM: So your representation

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1 is you've produced in Case 2 what Judge Payne ordered in
2 the Case 1; is that correct?

3 MR. RUECKHEIM: Correct, Your Honor.

4 SPECIAL MASTER FOLSOM: Is that satisfactory,
5 or do we need additional --

6 MS. CHESTNEY: Just to clarify, I guess, what
7 we would be wanting to make sure of is that they were
8 not withholding any records that show accused products
9 that were shipped to somewhere in North or South America
10 that were not shipped to the United States, but that
11 passed through the United States. So that wasn't
12 directly addressed in Judge Payne's previous order, but
13 we believe those are relevant, because there's case law
14 showing that products that pass through -- that are
15 imported to the United States temporarily go to the
16 damages.

17 SPECIAL MASTER FOLSOM: So if I understand,
18 basically, there's a concern that those -- that category
19 of documents was not ordered by Judge Payne in Case
20 No. 1; is that correct? Is that what your concern is
21 and that you want to make sure that in Case 2 you have
22 those documents?

23 MS. CHESTNEY: I think the issue wasn't
24 explicitly addressed previously, and so we want to make
25 sure that there aren't accused products that fit that

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1 category that are missing here.

2 SPECIAL MASTER FOLSOM: Response?

3 MR. RUECKHEIM: Your Honor, I think what
4 Ms. Chestney is asking for is the same information we
5 just discussed in which we answered in our motion
6 opposition that Netlist alleges that it is looking for
7 how each product was routed to determine if products
8 were shipped to the United States, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

16 SPECIAL MASTER FOLSOM: Yeah. Well, with that
17 representation, I'm inclined to say this issue is
18 resolved, but is that correct?

19 MS. CHESTNEY: Your Honor, on Netlist's end, if
20 Micron states that it's performed the investigation and
21 there are no such records in existence, then that's
22 resolved.

23 SPECIAL MASTER FOLSOM: Is that the
24 representation?

25 MR. RUECKHEIM: I referenced the cases,

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1 Your Honor, and what I read from the motion. So sitting
2 here, it said that we performed the investigation. ■

■ [REDACTED]

■ [REDACTED]

5 Whether there's a record of that, if some engineer wrote
6 something on a napkin, I don't know. But we performed
7 that investigation and we can --

8 SPECIAL MASTER FOLSOM: I think I heard enough
9 on this. I'll enter an order based on the comments and
10 the motion and responses.

11 So does that take care of this category of
12 motion issues?

13 MS. CHESTNEY: Yes, Your Honor, it does.

14 Thank you.

15 SPECIAL MASTER FOLSOM: What do we now go to?

16 MS. CHESTNEY: There is one more category,
17 which is documents showing the technical benefits of the
18 PDA features, just to make sure we covered everything.
19 But that's basically the same discussion as the last
20 one. So as long as Micron attests that there are no
21 further documents that it hasn't produced relating to
22 the technical benefits of the PDA features of the
23 accused products, then the motion is resolved.

24 SPECIAL MASTER FOLSOM: Response?

25 MR. RUECKHEIM: Okay. For that, Your Honor, as

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1 well, we responded in our opposition that we performed
2 the investigation again. We are not withholding any
3 documents, and there's nothing left to compel.

4 SPECIAL MASTER FOLSOM: Very well.

5 MR. RUECKHEIM: The documents have been
6 produced to the extent they exist.

7 SPECIAL MASTER FOLSOM: With that
8 representation, does that take care of this issue?

9 MS. CHESTNEY: It does, Your Honor.

10 SPECIAL MASTER FOLSOM: Okay. I appreciate
11 that.

12 Where do we go now? Netlist's motions or
13 Micron's motions?

14 MR. RUECKHEIM: Netlist Docket 221.

15 SPECIAL MASTER FOLSOM: Okay.

16 MR. PAYNE: And, Your Honor, for Netlist,
17 Mr. Kahn will argue this motion.

18 SPECIAL MASTER FOLSOM: Very well.

19 MR. KAHN: Thank you, Your Honor. David Kahn
20 on behalf of Plaintiff Netlist.

21 I think it's likely this motion will also be
22 dealt with pretty quickly because Micron has stated in
23 its briefing that it will supplement each of the rogs.
24 The only issue remaining is that they haven't
25 committed -- they filed those briefs already, days ago,

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1 and haven't committed to a specific date for
2 supplementation and specifically one that would be
3 before depositions.

4 SPECIAL MASTER FOLSOM: Yeah. What's a
5 reasonable date for Micron to supplement in that regard?

6 MR. RUECKHEIM: Your Honor, I'm thinking two
7 weeks. We've had some holiday issues, and I think the
8 next round of depositions is really in February. So we
9 are shooting for --

10 SPECIAL MASTER FOLSOM: Can that be done by two
11 weeks from today?

12 MR. RUECKHEIM: Yes, Your Honor.

13 SPECIAL MASTER FOLSOM: Is that satisfactory?

14 MR. KAHN: I believe there may be a
15 potential -- the expert deposition dates aren't pinned
16 down yet. There may be a potential that either a
17 Netlist expert or Micron expert is deposed before then.

18 SPECIAL MASTER FOLSOM: Well, then, can you
19 commit before the expert witness depositions to
20 supplement then?

21 MR. RUECKHEIM: Well, they are not pinned down
22 yet, Your Honor. It can be tomorrow, but
23 January 19th -- I don't think there's going to be
24 anything before January 19th. I don't believe Counsel
25 has identified any, but we are happy to meet and confer,

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1 of course.

2 SPECIAL MASTER FOLSOM: Well, why don't I
3 suggest this: No later than January 19th, if by -- if
4 an expert witness deposition is scheduled before the
5 19th and you cannot agree to supplement, then inform me,
6 and I will take the necessary action to make sure
7 everyone feels comfortable going forward with the expert
8 witness deposition. Is that agreeable?

9 MR. RUECKHEIM: Understood, Your Honor.

10 MR. KAHN: Yes, Your Honor. Thank you.

11 SPECIAL MASTER FOLSOM: Okay.

12 MR. KAHN: It may not be the next docket item,
13 but I think logically it makes sense to group this with
14 Docket 223.

15 SPECIAL MASTER FOLSOM: Very well.

16 MR. KAHN: Which is also a motion to compel
17 interrogatory responses. So the issue with regard to
18 Interrogatory 5 and 6 overlaps with the -- with Docket
19 220. It's the damages rog, and specifically we are
20 seeking the qualification information. So I think as
21 long as Micron's response to the interrogatory in -- you
22 know, with the same information that it said it will
23 produce, then that should be resolved as well. And then
24 the remaining ones, Micron --

25 SPECIAL MASTER FOLSOM: Let's have a response

1 first before we go to the next topic.

2 MR. RUECKHEIM: For Micron, Your Honor, we
3 agree it should be completely resolved with regard to
4 the qualification issue we just discussed.

5 SPECIAL MASTER FOLSOM: Very well. Now, next.

6 MR. KAHN: Thank you, Your Honor.

7 Then the remaining interrogatories, Micron also
8 committed to supplement so that just ties back to the
9 issue of timing, which we already addressed. So if that
10 order applies to remaining interrogatories, then I think
11 we are okay.

12 SPECIAL MASTER FOLSOM: Response?

13 MR. RUECKHEIM: I need to look at each one,
14 but, yes, Your Honor, to the extent that we agree to
15 supplement our responses for the interrogatories at
16 issue in Docket No. 223 then, yes, the January 19th
17 date, we are trying to supplement all of them by that
18 same date.

19 SPECIAL MASTER FOLSOM: Very well then. Then
20 all supplementation should take place by January 19th by
21 5:00 P.M. Central Time.

22 MR. RUECKHEIM: Understood, Your Honor.

23 SPECIAL MASTER FOLSOM: Very well.

24 MR. KAHN: Thank you, Your Honor.

25 MR. RUECKHEIM: I think the next, Your Honor,

1 is Micron's motion Docket 222, and Mr. Park will be
2 addressing that one.

3 MR. PARK: Thank you, Your Honor.

4 This is Ryuk Park for Defendant Micron. So the
5 issue in Docket 222 is Netlist's production or lack of
6 production of expert reports from prior litigations
7 against a company called SK Hynix that involved either
8 the same or related patents, the same or related accused
9 products, or the same experts. And Netlist has
10 responded in its opposition that it has produced some of
11 those reports, but it isn't clear from their responses
12 whether they have -- they are agreeing to produce what
13 we are requesting or whether they are opposing some --
14 at least a portion of our request.

15 SPECIAL MASTER FOLSOM: And I'm trying to
16 remember: Did Judge Payne address this issue in a
17 previous case also?

18 MR. SHEASBY: He did, Your Honor.

19 MR. PARK: Yes.

20 SPECIAL MASTER FOLSOM: Very well. Who is
21 responding for Plaintiff?

22 MR. PAYNE: I'll address this motion,
23 Your Honor. Stephen Payne for Plaintiff. I don't
24 believe there's a dispute between the parties here.
25 This issue is third-party confidential information. So

1 in the last case with Micron, Judge Payne did order a
2 production of expert reports for experts who were common
3 between this litigation and the past litigation. So
4 essentially experts who are retained by Netlist in both.
5 And we are willing to produce that same scope of reports
6 here, which I believe is all that Micron asking for.
7 But the issue is that those reports contain third-party
8 confidential information, including of the Defendants in
9 those cases, SK Hynix and others. And in the last case,
10 Judge Payne had ordered that, where Micron was seeking
11 reports with third-party confidential information, that
12 Micron obtain -- first obtain consent from those third
13 parties. And we haven't gotten any indication that they
14 have obtained those consents in this case. If they give
15 us that indication, we are willing to produce the same
16 scope of reports, but we can't do so under the
17 protective orders in those cases until the third-party
18 confidentiality issue is resolved.

19 SPECIAL MASTER FOLSOM: Very well. Reply?

20 MR. PARK: So, Your Honor, we've actually tried
21 to reach out to what we understand might be the outside
22 counsel for SK Hynix, but we have not received a
23 response. So if at least Netlist can provide us with
24 the most recent contact information or the most accurate
25 information and to see if that is different from what we

1 have so far in our records, that could expedite the
2 process.

3 SPECIAL MASTER FOLSOM: Any reason why that
4 information couldn't be furnished?

5 MR. PAYNE: No. This, Your Honor, I think, is
6 the first request I've heard for that, but I see no
7 reason why we could not provide that information.

8 SPECIAL MASTER FOLSOM: No later than a week
9 from today.

10 MR. PAYNE: Yes, Your Honor. I see no reason
11 why we couldn't do that.

12 SPECIAL MASTER FOLSOM: For some reason this
13 doesn't -- probably what I will do is dismiss this
14 motion without prejudice. If for some reason that
15 doesn't resolve this issue, you could always renew it.

16 MR. PARK: Thank you.

17 SPECIAL MASTER FOLSOM: Very well. What's
18 next?

19 MR. RUECKHEIM: The next -- moving along -- is
20 the Micron motion to strike untimely responses,
21 interrogatory responses, Docket 271. And we just
22 received Netlist's response on this motion. Just -- it
23 was one of the -- there's two motions left that have
24 recently been referred to Your Honor. And so we
25 received their opposition, and we are preparing a reply.

1 And so for this motion, we propose submission of the
2 reply and submission of the arguments on the briefing.

3 SPECIAL MASTER FOLSOM: Response, if one is
4 necessary?

5 MR. SHEASBY: I am sorry, Your Honor. Could
6 you say that again?

7 SPECIAL MASTER FOLSOM: I said a response, if
8 required.

9 MR. SHEASBY: Your Honor, if they get a reply,
10 we'd like to surreply, but we're certainly not going to
11 prevent them from --

12 SPECIAL MASTER FOLSOM: I never saw the order
13 of Judge Gilstrap's briefing schedule. So is that
14 allowed under his briefing schedule? If not --

15 MR. RUECKHEIM: It is, Your Honor. Sorry to
16 interrupt. This is a motion to strike. Judge Gilstrap
17 puts limitations on discovery motions to compel. But it
18 is a motion to strike. Reply and surreply are allowed,
19 to my understanding.

20 SPECIAL MASTER FOLSOM: Very well. I will
21 allow that additional briefing. And, I guess, we will
22 revisit this if it's not resolved by the briefing. I
23 would encourage the parties to continue to try to
24 resolve this issue so we don't have to gather again, so
25 to speak.

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1 MR. RUECKHEIM: The last, Your Honor, is
2 Netlist motion, Docket 274. So I don't believe briefing
3 is closed on this issue either, although Micron has
4 filed its response.

5 MR. SHEASBY: No, Your Honor. This is a
6 discovery motion. So briefing is closed. So this is
7 ready for resolution.

8 SPECIAL MASTER FOLSOM: Well, what is the issue
9 on this one?

10 MR. SHEASBY: Yes, Your Honor. So this is --
11 relates -- Madam Court Reporter, can I have the share --
12 can you allow me access to the share-screen feature,
13 please?

14 While that's happening, I will talk over it.
15 So a deposition was taken of a witness named Scott Cyr.
16 He's a 30(b)(6) witness. There is -- there are patents
17 that are involved in the proceedings before this Court
18 that are also involved in IPR proceedings. There were
19 some testimony in the -- in the depositions that is not
20 confidential that Samsung has declined to -- sorry --
21 Micron has declined to designate because it's
22 dissatisfied with our use of it in the IPR proceedings.
23 And so there are really two steps to this. The first --
24 SPECIAL MASTER FOLSOM: Are you talking
25 about -- I asked earlier -- in the provision of the

1 protective order entered in this case that it can --
2 confidential matters cannot be used in other litigation;
3 is that correct?

4 MR. SHEASBY: That is absolutely right. We are
5 forbidden from using anything that's designated as
6 confidential, which is why we sought to de-designate it
7 as not confidential.

8 SPECIAL MASTER FOLSOM: And why should it be
9 de-designated?

10 MR. SHEASBY: Because it's not confidential,
11 Your Honor. And the protective order does not allow you
12 to designate as confidential information that is not
13 confidential. There is a --

14 SPECIAL MASTER FOLSOM: But why is it
15 information that -- why is it not confidential?

16 MR. SHEASBY: Yeah. So they don't dispute that
17 the information is not confidential. The information is
18 talking about the -- they don't dispute in their brief
19 that the information is not confidential. They -- it's
20 talking about abstract concepts. It's talking about
21 public -- excuse me. It's talking about abstract --
22 there's abstract conversations about terms in the -- in
23 the terms that are used in the field and that there is
24 nothing in it that's confidential. In fact, in their
25 opposition, they only identified one portion that is

1 confidential. It's this portion on the screen on
2 Slide 9.

3 SPECIAL MASTER FOLSOM: I couldn't -- maybe
4 there is those in the room that can read that. I
5 cannot --

6 MR. SHEASBY: Is that any better?

7 SPECIAL MASTER FOLSOM: That's better. So
8 basically you're taking the position they've
9 over-designated --

10 MR. SHEASBY: This -- so there's two -- they
11 have two arguments. One is a valid argument. The first
12 argument is that we are re-asking questions that were
13 not related at all to the litigations in the District
14 Court for surreptitious use in the IPR PTAB proceedings.

15 SPECIAL MASTER FOLSOM: So are you satisfied --

16 MR. SHEASBY: That's a valid criticism. The
17 answer is no. The reason for that is because the
18 questions we are asking, because the patents that are
19 involved in the PTAB are also involved in the District
20 Court cases and there's validity challenges in both,
21 that there is -- there's just a nexus between the two.

22 So, for example, the '912 patent, which is
23 before Your Honor, talks about ranks. We asked
24 questions about ranks. They are not disputing that
25 those questions are -- those answers are

1 nonconfidential. They are just saying it's unfair for
2 them to have asked those questions because they're going
3 to use it in the PTAB. But that's the necessity of the
4 parallel track that Congress has created. And so there
5 are, in essence, going to be instances in which
6 questions are relevant in both proceedings. This is one
7 of those examples.

8 If they thought there was a problem, they could
9 have moved for a protective order and instructed the
10 witness not to answer. But they didn't, because the
11 subject matter is directly overlapping. And so the
12 question is, now that they haven't moved for a
13 protective order, the questions are in the record, can
14 you use a protective order improperly to keep something
15 nonpublic that you admit is not confidential? In their
16 opposition, they admit every single question we want
17 de-designated as nonconfidential except this one,
18 Your Honor.

19 SPECIAL MASTER FOLSOM: Sure. Let's have a
20 response.

21 MR. RUECKHEIM: Okay. Your Honor, Mike
22 Rueckheim again for Micron.

23 First, Mr. Sheasby is incorrect that we cannot
24 dispute the testimony is confidential, and in our
25 opposition brief, which, I believe is Docket 303,

1 included in Appendix A that broke down the lines of
2 deposition transcript and identified why certain
3 testimony is confidential. And we also even put in
4 there as a potential compromise --

5 SPECIAL MASTER FOLSOM: Tell me -- the
6 protective order -- explain that to me.

7 MR. RUECKHEIM: Sorry, Your Honor, I missed the
8 first few words.

9 SPECIAL MASTER FOLSOM: Why is this testimony
10 confidential under the protective order? What is
11 your --

12 MR. RUECKHEIM: So we included that in our
13 Appendix A. We have the testimony in there, and then we
14 identify the certain lines by -- with the actual
15 testimony next to it why certain lines are confidential.
16 I can turn you -- I don't know if you have our
17 Appendix A for Docket 303 in front of you --

18 SPECIAL MASTER FOLSOM: I have -- I have a lot
19 of paper in front of me. So if you could perhaps put it
20 up on the screen, maybe that would be helpful.

21 MR. RUECKHEIM: Give me one second, Your Honor.

22 MR. SHEASBY: Mr. Rueckheim, I have it handy,
23 if you want me to pull it up for you, or you have it --

24 MR. RUECKHEIM: I think I might have it on the
25 screen. Is it on the screen now?

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1 MR. SHEASBY: Yes.

2 SPECIAL MASTER FOLSOM: Yes.

3 MR. RUECKHEIM: Okay. So this is the
4 Appendix A we filed with our motion opposition,
5 Your Honor. And so what we have here is all of the
6 testimony, and this is our several pages. And you can
7 see that Netlist has identified that they want to --
8 they are asking to de-designate. And so for certain
9 testimony, we have agreed -- conditionally agreed --
10 I'll explain more about that in a second -- to
11 de-designate the testimony, such as, "My name is Scott
12 Cyr." Here's his job title. Here's how long he's been
13 working at Micron.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

6 For the most part, the testimony that we have
7 not agreed to conditionally de-designate is only for
8 internal Micron information. But, Your Honor -- I'll
9 drop the screen for a second -- the primary issue here,
10 though, is that the protective order in paragraph 5
11 prohibits use of documents produced in discovery for
12 anything other than the present litigation. It's not --
13 it doesn't say "confidential document," "highly
14 confidential document." The discovery procedures in
15 this court are to be used for this litigation only, and
16 if Mr. Sheasby --

17 SPECIAL MASTER FOLSOM: You're saying it's not
18 only confidential documents, it's all documents,
19 testimony, et cetera?

20 MR. RUECKHEIM: Exactly, Your Honor. I think
21 the --

22 SPECIAL MASTER FOLSOM: Yeah.

23 MR. RUECKHEIM: -- I think the dispute between
24 the parties is Mr. Sheasby's opening brief saying this
25 is an Article III court and proceedings are public. But

1 we've cited in our opposition Texas cases -- and there's
2 other cases as well -- that discuss that discovery
3 procedures are different. And the -- both relevant
4 quote that we saw was from this 99- -- 9,041,580. It's
5 a number of the Defendant. It's a weird case title.
6 But it says that Courts routinely distinguished
7 discovery materials from Article III public materials,
8 because they play no role in performance of Article III
9 functions. And there is a -- if you -- if there was a
10 presumption that all these materials are public, the
11 civil discovery process will be made a lot more
12 complicated than what it is.

13 So what we have had in this case is
14 Mr. Sheasby, in several cases, has asked witnesses, who
15 have no idea what's going on in IPR -- and IPR is really
16 filed here by Samsung. We have been acting in an
17 understudy role. So Mr. Sheasby asked our witnesses
18 questions relating to IPR positions only.

19 SPECIAL MASTER FOLSOM: Okay. This was an
20 improper question, and so was there an objection, a
21 request from the discovery hotline motion, any sort of
22 motion practice, other than the motion presently
23 pending?

24 MR. RUECKHEIM: No, Your Honor. No. And I
25 heard Mr. Sheasby say that. My only response to that is

1 that it really is just the dog wagging the tail. You're
2 going to ask an improper question. If we don't object,
3 you say, okay, well, now this information should be
4 public. We can use it for PTAB proceedings. That's not
5 correct in our position. Our protective order says it
6 should be used -- discovery in this matter should be
7 used for this litigation only. You're taking these
8 people's time to get them in depositions. We should
9 respect that process.

10 SPECIAL MASTER FOLSOM: Okay. Reply -- I think
11 I understand the issues. But reply?

12 MR. SHEASBY: Your Honor, everything
13 Mr. Rueckheim says, in terms of the policy, strikes me
14 as correct. The problem is that, when you have parallel
15 proceedings that involve the same patents, out of
16 necessity, there's going to be questions that are
17 relevant to both proceedings. And what is going on here
18 is they are using information, most of which they don't
19 even dispute as confidential.

20 SPECIAL MASTER FOLSOM: District Court's
21 protective order covered not only confidential matters,
22 but all productions in the case not to be used in other
23 litigations?

24 MR. SHEASBY: Your Honor, that's not how I read
25 the Court's protective order. The Court -- in fact,

1 they have previously de-designated testimony -- agreed
2 that testimony was not confidential for the purposes of
3 submitting it to the PTAB, and so this is -- this is a
4 new alternative argument that they've made.

5 But the answer is, if there's dual use of
6 testimony that -- for -- the alternative for us to get
7 it de-designated here would be for us to go to the PTAB
8 and ask the PTAB to de-designate it, but it's your --
9 it's this Court's order that has it as -- they are using
10 this Court's order to shield it. And so the situation
11 is -- the protective order says that discovery should be
12 used only for the purposes of this action.

13 We can establish that the questions we were
14 asking were relevant for this action, and if you want a
15 supplemental brief, because we haven't had a reply where
16 they made that allegation, we can establish that the
17 slides that I was showing you make that clear. And then
18 the question is, given that it's dual use, the fact that
19 it's dual use -- they are not disputing it's
20 confidential in most situations. What they're saying is
21 you can't use it for any other purpose, despite the fact
22 that it's nonconfidential, even though it was obtained
23 for the proper purpose in this proceeding.

24 There was no objection. There was no
25 protective order. There's no argument that we were

1 asking improper questions. There was no instruction not
2 to answer. And for each of those questions, Your Honor,
3 I can go through our claims and the disputes in this
4 case and establish that the questions were relevant.

5 The problem is, now that the relevant questions
6 had been asked, they want to prevent their use, even
7 though they're nonconfidential in any other forum, and
8 that's an abuse of the protective order.

9 SPECIAL MASTER FOLSOM: Very well. Are you
10 entitled to a reply brief on this motion?

11 MR. SHEASBY: Your Honor, it's -- it's -- it's
12 unclear. We would like a reply brief.

13 SPECIAL MASTER FOLSOM: Any opposition to a
14 reply brief and surreply, I guess, if necessary?

15 MR. RUECKHEIM: Well, Your Honor, I'll just --
16 just two things. One, Mr. Sheasby said that we've
17 agreed, Micron has agreed to de-designate for PTAB --
18 that's just not true.

19 And, number two, I think what Mr. Sheasby is
20 asking for is a reply to explain why the questions that
21 he wants de-designated are relevant to the PTAB and to
22 the District Court, and we've already explained in our
23 opposition brief why they are not. [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 SPECIAL MASTER FOLSOM: I'm not sure that
7 answered my question.

8 Are you opposed to a reply brief?

9 MR. RUECKHEIM: Not strongly opposed.

10 SPECIAL MASTER FOLSOM: Okay. Then a reply
11 brief no later than a week from today and a surreply on
12 the following Wednesday, whatever date -- that's the
13 17th, I believe.

14 MR. RUECKHEIM: Understood, Your Honor.

15 MR. SHEASBY: Thank you, Your Honor.

16 SPECIAL MASTER FOLSOM: Does that take care of
17 all the issues related to Micron?

18 MR. SHEASBY: It does, Your Honor.

19 SPECIAL MASTER FOLSOM: Okay.

20 MR. RUECKHEIM: Thank you. Your Honor.

21 SPECIAL MASTER FOLSOM: You're welcome to go or
22 welcome to stay. I appreciate everyone's efforts in
23 making this as streamlined as possible.

24 So now we will move to the Samsung portion of
25 the --

1 MR. KAHN: Excuse me, Your Honor. Yeah. I
2 believe we haven't addressed Docket 271, which was
3 Micron's motion to strike Netlist Interrogatory No. 4.

4 SPECIAL MASTER FOLSOM: Very well. Well, let's
5 address it.

6 MR. RUECKHEIM: Sorry. We did. We did,
7 Your Honor. We agreed to -- Micron is going to -- still
8 within this reply period, and so Micron is going to
9 submit the reply and then just submit on the papers.

10 SPECIAL MASTER FOLSOM: This was the last item
11 on the agenda.

12 Do you agree, Mr. Sheasby, on behalf of
13 Netlist?

14 MR. SHEASBY: This is -- we do, Your Honor.

15 SPECIAL MASTER FOLSOM: Okay. Very well. Then
16 like I said, you are welcome to say or be on your way,
17 so to speak.

18 MR. RUECKHEIM: Thank you, Your Honor.

19 SPECIAL MASTER FOLSOM: Does anyone need a
20 short break?

21 MR. SHEASBY: Your Honor, I'll always take a
22 short break.

23 SPECIAL MASTER FOLSOM: Why don't we take about
24 a five-minute break. We will start back
25 approximately -- I mean, 11:05 Central Time.

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1 MR. SHEASBY: Thank you, Your Honor.

2 (A break was taken.)

3 SPECIAL MASTER FOLSOM: In any event, how do we
4 best -- we -- I guess we have the easy part behind us or
5 at least the smaller number of motions.

6 How do we go about addressing the pending
7 motions that relate to Samsung? Any way we can group
8 those, so to speak, or do we simply need to take them
9 individually?

10 MR. SHEASBY: Your Honor, this is Jason
11 Sheasby. There are, I think, three motions that relate
12 to the license defense issue that may be appropriately
13 heard together. There's a motion for protective order.

14 SPECIAL MASTER FOLSOM: I have 193, 199, 224,
15 and 225, unless some of those -- I have four, unless one
16 of them was resolved.

17 MR. SHEASBY: No, I think that's right,
18 Your Honor. I may -- I said "three," but there is four.
19 You're correct, Your Honor.

20 SPECIAL MASTER FOLSOM: So --

21 MR. McKEON: With respect to the JDLA issue,
22 Your Honor, that -- I -- that's 193 --

23 SPECIAL MASTER FOLSOM: 199 --

24 Mr. McKEON: -- 224 and 225, those are sort of
25 the three that -- that have related issues. So to the

1 extent we're going to argue in groupings, those would go
2 together, I believe. And then, I think, additionally --

3 SPECIAL MASTER FOLSOM: What's everyone's
4 pleasure. I'm just wondering, is that a way to approach
5 it, or do we need to, you know, take up each of those
6 individually in some fashion? I don't know if it
7 matters that much, but --

8 MR. McKEON: They all have a different flavor,
9 Your Honor. So maybe, you know, in order together,
10 because there's some overlap, but I think they need to
11 be argued individually, though I think it will be --
12 these will be quick. Some of these arguments will be
13 quicker than others.

14 SPECIAL MASTER FOLSOM: Okay.

15 MR. SHEASBY: Why don't we do -- my proposal
16 would be 193, 224, and 225 as the first bucket. That's
17 the motion for a protective order. And then the -- the
18 motion to compel, which relates to one of the witnesses
19 that is the subject of the protective order, and then
20 the preclusion motion.

21 MR. McKEON: I think that's great.

22 SPECIAL MASTER FOLSOM: Very well. So who's
23 going forward with 193, 224, and 225, those motions?

24 MR. McKEON: Well, Your Honor, I'll start that
25 off with Samsung -- again, it's Mike McKeon -- and 193

1 is the Samsung motion for protective order. And let's
2 just jump right into it, Your Honor.

3 So really, you know, we filed this motion,
4 Your Honor, because Netlist was pursuing deposition
5 discovery related to issues that are really not -- are
6 not at issue in East Texas, I mean, clearly, in our
7 view. And we think the Ninth Circuit decision, Your
8 Honor, and we said a lot about that --

9 SPECIAL MASTER FOLSOM: (Inaudible) Mr. McKeon,
10 is that correct?

11 MR. McKEON: Yeah, Mr. McKeon. Yes, Your
12 Honor.

13 SPECIAL MASTER FOLSOM: No, the termination
14 issue.

15 I know who you are.

16 MR. McKEON: Yeah. Yeah, this --

17 SPECIAL MASTER FOLSOM: I might be old, but I'm
18 not so old that I've forgotten.

19 MR. McKEON: No, Your Honor, the -- basically,
20 the division between what's going on in Central District
21 of California and what's going on in East Texas, that
22 line is very clear. And that line was created --
23 frankly, it was created when Netlist filed its
24 declaratory judgment action in its case in California in
25 2020. You know, two years before this case. And --

1 SPECIAL MASTER FOLSOM: I read the joint status
2 report last night, and it seemed like an opportunity for
3 everyone to have another round of briefing. And to be
4 quite honest, I'm a little confused about what Netlist's
5 position is in that regard, whether the termination
6 issue is before the Eastern District Court or not. So
7 but, in any event, I'm sure we'll have a response in
8 that regard.

9 My reading of Judge Gilstrap's order is quite
10 clear, but maybe I misread it.

11 MR. McKEON: Your Honor, that's our view. And
12 the basis of a protective order motion, the basis of it,
13 is the Ninth Circuit decision and then the subsequent
14 proceedings in the Central District of California. And
15 then after we filed the protective order motion,
16 Judge Gilstrap issued his -- his order regarding the
17 stay and --

18 SPECIAL MASTER FOLSOM: What's being requested
19 under the protective order? So let's make sure I have a
20 clear understanding. I think I do. But what's the
21 nature of the protective order?

22 MR. McKEON: I mean, the gravamen of it,
23 Your Honor, is deposition testimony. They've got
24 witnesses they've listed that are clearly directed to
25 the breach termination issues. And these issues are all

1 in the Central District of California.

2 You know, Mr. Choi, which is another motion
3 we're going to be arguing in a minute -- I mean, they're
4 very up front about it. I mean, they're requesting
5 testimony from Mr. Choi about -- about the supply
6 provision, which is the 6.2 provision in the JDLA.
7 That's all Central District of California. I mean,
8 there's no dispute about that.

9 And then Judge Gilstrap's order, Your Honor --
10 it's so abundantly clear. He's taking -- in light of
11 Fifth Circuit precedent that we presented to
12 Judge Gilstrap and he's following it to a tee. He's
13 saying, okay, well, I'm -- you know, we -- we asked him
14 to stay the cases, Your Honor. We thought that was
15 better -- the better approach, but he, obviously, saw it
16 differently. But what he did do is say, well, here's
17 the line and what they're doing in there, we're not
18 going to do here.

19 And frankly --

20 SPECIAL MASTER FOLSOM: Let me -- I'm not
21 trying to jump start this, but what is the position of
22 Netlist on the termination issue? I'm a little unclear
23 after reading the status report. Maybe I should have
24 had a clearer understanding of it.

25 Who wants to respond in that regard?

1 MR. SHEASBY: Your Honor, this is Jason Sheasby
2 for Netlist. There's a pled JDLA license defense in
3 front of Judge Gilstrap. Judge Gilstrap denied to stay
4 the case -- denied staying our case and made clear that
5 that JDLA license defense is live in front of him.
6 There are two --

7 SPECIAL MASTER FOLSOM: But do you take the
8 position, though, the termination issue is in some
9 fashion in front of Judge Gilstrap? Because I certainly
10 don't read his order for that proposition, Mr. Sheasby.

11 MR. SHEASBY: I agree with that, Your Honor.
12 There are two aspects to the JDLA license defense. One
13 aspect to the -- to the issue is whether the license
14 grant covers the products at issue in this case. The
15 second is the termination issue and the issues relating
16 to termination.

17 It's clear that Judge Gilstrap, for the moment,
18 is not intending to rule on the issue of termination and
19 is going to wait for the Central District of California
20 to make --

21 SPECIAL MASTER FOLSOM: Then why should you
22 have discovery on that issue?

23 MR. SHEASBY: I'm sorry, what?

24 SPECIAL MASTER FOLSOM: Then why should you
25 have discovery on that issue?

1 MR. SHEASBY: Your Honor, it's the first part
2 of it that is -- is in play. In other words, that the
3 scope of the license grant, what folks thought was the
4 scope of the license grant during the agreement -- all
5 of that issue is directly in front of Judge Gilstrap.
6 Judge Gilstrap declined to stay the case. Judge
7 Gilstrap made clear that there -- those issues are in
8 front of him. There's no dispute that those issues are
9 not in front of the Central District of California.

10 And so it seems to me -- and the briefing was
11 completed in this matter before Judge Gilstrap issued
12 his decision on the motion to stay. And in addition to
13 the motion to stay, Netlist -- I would say that the
14 motion to stay is not the last word on this, Your Honor.
15 There was a motion for summary judgment filed on both
16 issues, which is on the scope of the license, as well as
17 the termination.

18 Judge -- Samsung attempted to avoid having to
19 answer that motion to summary judgment, which is on both
20 issues -- the scope of the license, as well as the
21 termination. Judge Gilstrap denied that motion to
22 strike and has ordered them to respond. And so it seems
23 to me, at a minimum, the protective order has now been
24 already answered by Judge Gilstrap.

25 Discovery relating to the scope of the license

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1 is only in one court. It's front of his court. And the
2 protective order is blocking discovery into that. It's
3 clearly inappropriate.

4 SPECIAL MASTER FOLSOM: Mr. McKeon, I guess,
5 you -- so --

6 MR. McKEON: Your Honor, it's nice to get some
7 clarifying response from Mr. Sheasby. We do appreciate
8 that. So, I mean, the line is clear. You know, in our
9 protective order, Your Honor is directed at one issue.
10 That is, anything that's going on in California
11 doesn't -- they should not be able to get discovery
12 here.

13 California --

14 SPECIAL MASTER FOLSOM: As to termination --

15 MR. McKEON: Well, let's be clear on this,
16 Your Honor. As to Supply Provision 6.2, as to the
17 allegation of breach, as to the propriety of the
18 termination, and as to the materiality of the -- of any
19 breach that's alleged, that's --

20 SPECIAL MASTER FOLSOM: Well, in the
21 termination basket. Maybe I was not being clear,
22 Mr. McKeon.

23 MR. McKEON: I just want to be clear on that,
24 Your Honor, because, you know, I want to be clear that
25 the record is clear, that when we say "termination

1 breach," we're talking about that bundle of issues,
2 because that's exactly what the California Court is
3 doing. And that's our protective order motion.

4 With respect to our license witness -- first of
5 all, we've produced our license witness. They had a
6 30(b)(6) on it. We produced our license witnesses. All
7 the transcripts from the last case are in this case.
8 And Mr. Ji, who's the witness that we brought to trial
9 in Netlist 1, there's an agreement between Netlist and
10 Samsung that we were not going to put Mr. Ji up until
11 this motion was resolved so we had clarity on what the
12 scope of his testimony will be.

13 So once this is resolved -- and we believe it
14 should be resolved in our favor -- then there will be no
15 inquiry into the California issues, and then they can,
16 you know, take his deposition on the -- the license
17 issues, which is, of course -- which is relevant here.
18 Of course, we agree with it.

19 And that's the line we -- we're just trying to
20 follow the line, Your Honor, that we believed that
21 Judge Gilstrap has now clearly drawn. And we think
22 discovery is off limits. Anything over that line into
23 California is completely off limits.

24 SPECIAL MASTER FOLSOM: I think we understand
25 the issue. I don't think you-all are going to agree

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1 upon this one. So --

2 MR. McKEON: Yeah. We're --

3 SPECIAL MASTER FOLSOM: 193, 224, 225 -- does
4 this sort of bleed over into 199, Mr. McKeon?

5 MR. McKEON: So 199, I don't think so,
6 Your Honor. Mr. Cordell will be addressing that.
7 That's really sort of an isolated issue, but it does
8 bleed into 224 and 225.

9 SPECIAL MASTER FOLSOM: I guess, I thought all
10 these arguments went to 193, 224, 225. So if you need
11 some additional comments on 225 --

12 MR. McKEON: Let me -- okay. Let me do that
13 now, Your Honor, and I can be brief on that.

14 So 224, this is -- and, again, it's Netlist's
15 motion, but I can address sort of our viewpoint on it.
16 It's a motion to compel the deposition testimony of
17 Mr. Choi. And -- and, again, the sort of the starting
18 point of that is they're very clear on their motion.
19 They want testimony on breach termination, all the
20 California issues. So which is -- you know, that's the
21 starting point.

22 And the other problem --

23 SPECIAL MASTER FOLSOM: It's up there. I don't
24 know if someone could remove that. Yeah. Thank you.

25 MR. McKEON: And then the -- so that's Point 1,

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1 Your Honor.

2 But then there's two other points, Your Honor.
3 They're not relevant to that. And that's, number one,
4 Mr. Choi no longer is at any of the Defendants in this
5 case. He's at a company called Samsung Display. It's a
6 \$24 billion sales company. They got, you know,
7 60-something-thousand employees. And he's president/CEO
8 of the company.

9 So they need to go through the Hague Convention
10 to get his deposition. He's in Korea. So he's not
11 in -- they can't just serve a subpoena on us. He's --
12 we're not -- he's not an employee. He's not related to
13 the entities in this case. They need to go to the
14 Hague. There's no evidence they've done that.

15 And then, also, he's an apex, Your Honor. This
16 is classic apex. I mean, he's CEO of the company. So
17 you've got to make a demonstration that you're entitled
18 to it. And they haven't done that, Your Honor. I mean,
19 does he have unique testimony? They've got to make that
20 demonstration.

21 And I'll note, Your Honor, that in the
22 California court, in the breach case, they tried to get
23 his deposition and the Court refused it based on apex.
24 They said, yeah, he's -- he's apex. He's CEO of the
25 company. And that should be the same result here.

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1 But frankly, Your Honor, just as a matter of
2 jurisdiction, there's no -- I mean, to be ordered to
3 produce a witness -- a resident of Korea for deposition
4 in a United States proceeding, when we have no control
5 over that resident, they haven't -- they haven't
6 demonstrated to pierce the veil or that we somehow
7 control this person. There's not demonstration of that.
8 It's their burden.

9 So, Your Honor, we think this one fails.
10 Again, the headline reason is it's California. Then
11 he's an apex witness, and they haven't -- they haven't
12 gone through the Hague Convention, which is what they
13 need to do.

14 So that's -- that's our --

15 SPECIAL MASTER FOLSOM: This is 224, obviously.

16 MR. McKEON: That's 224, Your Honor, yeah. And
17 that's really the point, Your Honor, in that motion and
18 that -- you know, if you need more elaboration, I can go
19 into it, but I think that's it.

20 SPECIAL MASTER FOLSOM: Response?

21 MR. SHEASBY: Your Honor, there are sort of two
22 nested issues here. JS Choi was the individual who
23 approved -- so let me -- let me say three things,
24 actually.

25 First, the "we're going to produce a 30(b)(6)

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1 witness on the topic of license scope" is not how
2 discovery works. They don't get to decide what witness
3 they produce on a subject. We are entitled to explore
4 the individuals we think are relevant.

5 And so the idea that, oh, we're going to give
6 you our witness on license scope, when they should have
7 been giving that before this protective order was even
8 filed, because they've conceded that at least license
9 scope is solely before this Court is not appropriate.

10 The second issue as to JS Choi, JS Choi, the --
11 I think there's some confusion as to the -- the parties
12 to this case. And Mr. McKeon may just not remember
13 this. But the party to this case is Samsung Electronics
14 Company Limited, which is the Korean entity. JS Choi,
15 on his LinkedIn declaration, makes clear that he is part
16 of Samsung -- not only Samsung Electronics Company
17 Limited, but also Samsung Electronics Memory.

18 There is a common tactic that Samsung uses.
19 Samsung is a conglomerate that has a number of
20 divisions. Each of those divisions are part of Samsung
21 Electric (sic) Company Limited. And the president of
22 the division of Samsung Electronics Company Limited,
23 that Mr. Choi is part of, is rolled up into Samsung
24 Electronics Co. Limited, which is stated in their
25 financial statement.

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1 And so this idea that, oh, a head of a division
2 is part of a different company -- there are probably 80,
3 if not 100, subsidiaries within Samsung Electronic Co.
4 Limited, and this -- this argument that they're not part
5 of SEC is just inconsistent with the financial
6 statements of Samsung, which makes clear that Display is
7 treated as Samsung Electronics Company Limited.

8 There's the next issue, which is the -- which
9 is the -- I'm sorry, Your Honor --

10 SPECIAL MASTER FOLSOM: Is this needed for this
11 point?

12 MR. SHEASBY: I can pull it back down,
13 Your Honor, if it's -- let me -- I'm not doing a good
14 job of showing you these.

15 Is -- is that better for -- is that easier for
16 you to see now?

17 SPECIAL MASTER FOLSOM: I just meant if you
18 were not needing those documents, let's --

19 MR. SHEASBY: Yeah. I'll take them off, yeah,
20 Your Honor.

21 So the next issue as to JS Choi --

22 SPECIAL MASTER FOLSOM: Screen share -- to go
23 ahead and use it, but if you're not using it --

24 MR. SHEASBY: No, no. I completely understand,
25 Your Honor.

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1 I think what the -- the confusion is the
2 following: If you draw the line that says termination
3 is not before this Court but license scope is before
4 this Court, it is the -- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] -- it is more likely than not -- a
8 jury can find that if JS Choi -- and he doesn't deny
9 that he was briefed on the scope of the license grant --
10 if the license grant is narrow and didn't give them
11 anything, [REDACTED]
[REDACTED]
[REDACTED].

14 And so their narrative in -- is the following:
15 The JDLA license agreement -- the JDLA agreement related
16 to a joint venture, and we committed to supply product
17 under that joint venture. Once that joint venture
18 ended, the commitment to supply the product ceased. So
19 we end it.

20 Our position is that that's an accurate
21 interpretation. The license grant, as well, was limited
22 to the JDLA. JS Choi was the executive in the Memory
23 division, who made the decision that the JDLA was over.
24 That's their position.

25 The JDLA being over, the question is: If the

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1 JDLA was over, that means the license grant was over as
2 well, and that's what a jury could find.

3 So we think we satisfy the apex doctrine. If
4 they want us to go through the Hague Convention and --
5 although, they don't have any declaration or any actual
6 evidence that JS Choi is not an officer or an employee
7 of SEC Limited in their opposition. But if that's truly
8 their point, we will ask the Court -- once the Court
9 rules on the apex issue, we'll ask the Court to issue
10 letters rogatory so we can pursue him through the Hague
11 Conference.

12 So I think there's two issues. There's, one,
13 have we satisfied apex? [REDACTED]

14 [REDACTED] A jury can say, if the JDLA was over,
15 that must mean the license was over as well. That's a
16 reasonable inference that a jury can make. And [REDACTED]

17 [REDACTED]
18 And then randomly giving us some 30(b)(6)
19 witness, who they say is going to speak on behalf of the
20 company -- that's not how discovery works in the
21 United States.

22 The second issue, although they haven't done it
23 now, if they produce evidence that he's not controlled
24 by SEC Limited, what we will do, once the Court resolves
25 the apex issue, is we'll seek letters rogatory.

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1 That's our position, Your Honor.

2 SPECIAL MASTER FOLSOM: Mr. McKeon?

3 MR. McKEON: Yes, Your Honor. Let me address
4 the Mr. Choi issue first.

5 Mr. Choi is not an employee of any of the
6 Defendants in this case. We made that representation,
7 and that's just a fact. You know, his LinkedIn page,
8 he's the CEO of a \$24 billion company, and perhaps he
9 didn't update, but this is a -- that's his position, and
10 that's what was represented to California as well, which
11 is why they denied his deposition in California.

12 Mr. Choi's testimony -- well, let me just now
13 shift to the 193, Docket 193. The testimony they're
14 seeking clearly relates to 6.2. The JDLA, Your Honor,
15 has a separate provision for a license grant. Mr. Choi
16 never said that the JDLA was over. I'm not aware of any
17 statement that's close to that.

18 The only issue that -- that -- there's
19 testimony that Mr. Sheasby is seeking here is related to
20 6.2 and how that provision and what were they thinking
21 at Samsung related to the supply provision and supplying
22 product to Netlist. That was Mr. -- that's Mr. Choi's
23 knowledge. That is what they said to the California
24 Court, and that's what they said in their briefing here,
25 that that's his knowledge.

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1 And now he's trying to blur the lines -- "Oh,
2 no, it's really the license scope." It's not the
3 license scope. That's a completely different provision.
4 That's a perpetual license. It's a completely
5 provision, and his testimony has nothing to do with it.
6 He had nothing to do with the license issues at all. He
7 was just purely a supply -- dealing with the supply to
8 Netlist. So we take issue with that representation,
9 Your Honor.

10 With respect to the deposition, Mr. Ji -- we
11 put him up. We offered him for deposition, and we made
12 the -- we put him up for deposition with the requirement
13 that they weren't going to be asking questions about --
14 about the breach issue, the termination issues.

15 We met and conferred on it. We indicated he
16 was on Topic 115. If they wanted to have his
17 deposition, despite his deposition we produced in -- he
18 already got produced in California, his deposition. And
19 he testified in the Netlist 1 case. And we offered --
20 we offered to move forward on that basis. And then
21 agreed -- because we couldn't agree, we agreed -- I
22 thought it was a great agreement -- let's just hold off
23 on this until we're -- we get to the protective order
24 issue so we have a clear line from the Court.

25 And that was -- that was the agreement,

1 Your Honor. I didn't think it was an issue, and so I'm
2 surprised to hear it today. But that was the agreement
3 that we made, and we think it was a good agreement. It
4 makes sense, and now we have a deposition that's going
5 to be clear, one way or the other, based on the ruling
6 we get here on the protective order issue.

7 SPECIAL MASTER FOLSOM: I think I understand
8 the issue and know the position of the parties.

9 So do we now move to 199?

10 MR. McKEON: I think that's right, Your Honor.

11 SPECIAL MASTER FOLSOM: And who's presenting
12 199?

13 MR. CORDELL: I think that's me, Your Honor.

14 MR. PAYNE: I will be for Netlist, Your Honor.
15 I might suggest, if it's agreeable to Your Honor, that
16 we group this with 139 and 142 as well. All three of
17 these motions deal with requests for discovery on the
18 SK Hynix agreement negotiations.

19 SPECIAL MASTER FOLSOM: Yeah. 199. What were
20 the other two?

21 MR. PAYNE: 139 and 142 as well.

22 MR. McKEON: And, Your Honor, on our side,
23 we're suggesting 139 first, because that's more of a --
24 139 and 142 are related and they have sort of an
25 overriding issue. And 199 is sort of subsidiary. So we

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1 think maybe perhaps that's the best order -- 139, 142,
2 199.

3 SPECIAL MASTER FOLSOM: Very well. Well, you
4 may go forward.

5 MS. DEGNAN: Okay. This is Lauren Degnan for
6 Samsung, Your Honor. I'll be arguing 139 and 42.

7 139 is our motion to compel Netlist to produce
8 documents related to the negotiation between Netlist and
9 SK Hynix in connection with the SK Hynix agreement. And
10 the SK Hynix agreement is called the Strategic Product
11 Supply and License Agreement.

12 It is -- it is -- the agreement is certainly
13 relevant. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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So a little more background. When Samsung and Netlist were negotiating the JDLA we just spoke about,

[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Now, what we might see --

SPECIAL MASTER FOLSOM: This issue in -- in Micron 1; is that correct?

MS. DEGNAN: So I would disagree with that, Your Honor. Let me explain why first.

In Micron 1, we weren't a party. So that's certainly not controlling. But, more importantly, Judge Payne did not consider the contradictory positions Netlist is take -- has taken about the relevancy of negotiation.

So in Netlist 1, we talked about the -- Netlist

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1 moved to strike our damages experts compared -- you
2 know, comparable agreement analysis, saying over and
3 over again that, under Apple-Wi-LAN, there's no evidence
4 as to the value SK Hynix put on the patents-in-suit.
5 There's no evidence why SK Hynix made the payment it
6 did. And that's, of course, what the expert in
7 Netlist 1 was doing, was trying to allocate the payment
8 to decide how much of that related to patents-in-suit.
9 And that's exactly what our expert, Lauren Kindler, is
10 doing in this case.

11 And so Judge Payne was not -- is not confronted
12 with the facts -- the fact that Netlist successfully
13 argued that not talking about the SK Hynix -- not having
14 discovery from SK Hynix was a feeling and caused -- and
15 motivated the striking of our expert's report. So
16 Judge Payne didn't know that. He didn't assess the
17 ruling.

18 In fact, if you look at the transcript in that
19 Micron argument, the focus is very much on FRAND and how
20 the negotiations might be relevant to FRAND or RAND. In
21 fact, the order from Judge Payne cites and talks about
22 the Sole IP case mentioning FRAND.

23 The argument does not go into its -- the
24 relevance to the comparable agreement analysis for
25 reasonable royalty, which is what was the basis for

1 getting the opinion struck in Netlist 1.

2 So this ruling in Micron 1, besides being not
3 binding, is not persuasive. It's not assessed. What
4 the Judge did in Netlist-Micron 1, so balancing the
5 prejudice of having negotiations be discoverable versus
6 the relevance, but he didn't focus on the relevance that
7 we're highlighting here and on which Judge Gilstrap
8 apparently relied to strike our -- our expert report.
9 And it would be highly prejudicial to us if our opinions
10 in this case, by Lauren Kindler, are stricken because
11 she did not evaluate what value SK Hynix put on the
12 patents in this license agreement and why SK Hynix chose
13 to pay the payment.

14 And one issue I should flag for you is that

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]. We've taken the position and Judge --

18 Lauren Kindler [REDACTED]

19 [REDACTED]. And there's evidence supporting -- supporting
20 our position. But these negotiation documents are very
21 likely going to show what value, if any, SK Hynix
22 actually put on [REDACTED].

23 So to answer your question, definitely not
24 controlling, different facts.

25 SPECIAL MASTER FOLSOM: You said controlling.

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1 I simply asked about the ruling.

2 MS. DEGNAN: Okay. Well, I hope I answered
3 your question about the ruling. Is there more I can
4 talk about the ruling for you?

5 SPECIAL MASTER FOLSOM: I think I have
6 sufficient information.

7 What's the response?

8 MR. PAYNE: Thank you, Your Honor.
9 Stephen Payne for Netlist.

10 So, Your Honor, Judge Payne, we think, has
11 already ruled on this exact issue in the Micron case set
12 for January.

13 SPECIAL MASTER FOLSOM: Wouldn't you agree,
14 though, in Samsung 1 that there was a motion filed,
15 Daubert motion, but got the criticism of the Samsung
16 damage experts were failing to rely upon negotiation
17 documents in the apportionment analysis.

18 Do you agree with that?

19 MR. PAYNE: No, Your Honor. So that's not what
20 the motion was in Samsung 1, and that's not what the
21 ruling was.

22 The -- the motion in -- so first of all, it was
23 a different damages expert, who's not in this case.
24 Mr. Meyer was the damages expert in Samsung 1. He's not
25 in this case.

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1 SPECIAL MASTER FOLSOM: Does it matter?

2 MR. PAYNE: Pardon me, Your Honor?

3 SPECIAL MASTER FOLSOM: Is that necessarily
4 important that it's not the damage -- same damage
5 expert?

6 MR. PAYNE: Well, I mean, it was also a
7 different issue, which I'm getting to, Your Honor.

8 So the motion in Samsung 1, it didn't have
9 anything to do with the negotiation materials. The
10 motion was that the apportionment that Samsung's expert
11 performed in the first case was inconsistent with the
12 actual terms of the SK Hynix agreement, which didn't
13 mention any of the asserted patents and, also, with the
14 patents that were at issue -- actually issued in
15 SK Hynix litigation.

16 To give some background, the SK Hynix
17 patents asserted -- the patents asserted against
18 SK Hynix, they were different from the patents asserted
19 in the first Samsung case and they're different from the
20 patents asserted in this case. And so that was the
21 argument.

22 There was also a challenge to some -- some
23 separate apportionment analysis that Samsung's expert
24 had done that had nothing to do with the -- some
25 arbitrary apportionment numbers, nothing to do with

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1 negotiations.

2 There was no argument about negotiation
3 materials. There was no challenge based on them. The
4 Court did not rule that he had -- that the analysis was
5 inadmissible because there was a failure to consider
6 negotiation documents. The ruling was, under the Wi-LAN
7 case in the Federal Circuit, the analysis was not
8 consistent with the actual patents that were called out
9 in the SK Hynix agreement itself. And there were -- and
10 that were at issue in the SK Hynix litigation.

11 And the SK Hynix agreement has been produced
12 here. Both sides' expert have analyzed it. There's
13 nothing -- none of the discussion in Samsung 1 have
14 anything to do with the negotiation history, Your Honor.

15 SPECIAL MASTER FOLSOM: Could anyone point me,
16 either of you, to the docket entry number for that order
17 from Judge Gilstrap?

18 MR. PAYNE: That, Your Honor, would have been
19 in the first Samsung case, and I can pull that up.

20 MS. DEGNAN: I have it, Your Honor. It would
21 be the pretrial conference transcript in the first case
22 that was on March 28, 2023. And the decision that he
23 made is at page 247, starting at line 25.

24 SPECIAL MASTER FOLSOM: Very well.

25 MS. DEGNAN: And -- okay.

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1 MR. SHEASBY: And, Your Honor, this is
2 Jason Sheasby for Netlist. I just wanted to flag one
3 other issue. This is something that I observe quite
4 frequently. And I think it implicates a policy issue in
5 this district. And I think Judge Payne -- I argued that
6 at the pretrial conference. I argued this issue at the
7 discovery conference with Judge Payne, is that if we're
8 going to set a precedent where negotiation records
9 leading to settlement agreements get produced in every
10 single case, I can tell you that Samsung did not produce
11 a single one of its negotiation records. And so it is
12 going to be a sea change if this becomes a policy in
13 which negotiation records are going to need to be
14 produced. And I think that was the basis for
15 Judge Payne's ruling.

16 SPECIAL MASTER FOLSOM: You're saying there
17 will be no criticism if those documents are not produced
18 of the damage expert.

19 MR. SHEASBY: There will be no criticism of the
20 damages expert based on the absence of looking at the
21 negotiation. The only --

22 MS. DEGNAN: So this --

23 MR. SHEASBY: -- the only criticism of the
24 damages expert will be that the agreement itself lists
25 the patents that were the subject of the lawsuit in the

1 settlement.

2 SPECIAL MASTER FOLSOM: Because I'm hearing --
3 let me -- let me finish.

4 I'm hearing different versions from the
5 parties. One is saying you criticized their damage
6 expert for not relying upon those and yet you won't
7 produce them, which doesn't seem quite fair.

8 So you agree, Mr. Sheasby, with the statement
9 that the damage expert in Samsung 1 was not criticized
10 for not relying upon the negotiation documents? Is that
11 your position?

12 MR. SHEASBY: That's -- that's correct. He was
13 criticized for the fact that the settlement agreement
14 lists seven patents which are asserted against SK Hynix.
15 He did not take into account the patents that were
16 actually asserted against SK Hynix as the ones that were
17 driving the value of the agreement. And we're going to
18 say the exact same thing against Ms. Kindler, that she
19 didn't take into account what's on the face of the
20 contract.

21 SPECIAL MASTER FOLSOM: Reply comments of --

22 MS. DEGNAN: Definitely. Just let me have --
23 just give me a moment.

24 Mr. Compton -- I want to show you,
25 Judge Folsom, exactly what the agreement was and the

1 ruling was by Judge Folsom (sic).

2 So as we start on Slide 4, Mr. Compton --

3 SPECIAL MASTER FOLSOM: Judge Folsom --

4 MS. DEGNAN: Excuse me, Judge Gilstrap. Please
5 forgive me.

6 So if we start on Slide 4. So this is what the
7 Judge said when he struck the paragraphs of Mr. Meyer's
8 report. He says he thinks they fall within Apply versus
9 Wi-LAN. Okay.

10 If we go to Slide 5, I want to highlight what
11 the argument was before Judge Gilstrap, and it was that
12 under Apple-Wi-LAN, our expert was required to discuss
13 the value that SK put on each patent and why SK made the
14 payment it did. It was very focused on the lack of
15 evidence about what was in SK Hynix's mind. Not once
16 did they talk about that the -- you know, the agreement
17 itself -- somehow is inconsistent with the agreement
18 itself.

19 If you even go to the next slide, Mr. Compton,
20 which is just more the same from Netlist counsel --
21 again, what are the values for SK Hynix? But what
22 they're heard said today and in their briefing,
23 Judge Folsom, is, well, you've got the agreement and the
24 agreement says what it says, and that's the end of it.

25 You can take the slides down, Mr. Compton. But

1 that's not the test. The agreement certainly says, you
2 know, all -- but the agreements list some patents
3 outright, but it also covers all the patents. But
4 moreover, Wi-LAN itself, the case, actually examined
5 negotiation history. Look at that as relevant evidence.
6 Wi-LAN establishes that negotiation history actually is
7 relevant to what Mr. Sheasby told Judge Gilstrap, why
8 SK made the payment it did.

9 So for them to suggest that, just because the
10 word "negotiation history" wasn't mentioned during the
11 agreement is substance, the substance of the argument
12 was we don't know what was under the hood at SK Hynix
13 when they made the payment. And to do that, to get a
14 complete picture of that, we need now -- and have sought
15 in discovery -- these communications. This discovery
16 about negotiations, what did SK Hynix think about the
17 supply provisions value, about the specific patent. And
18 that is relevant, and Wi-LAN tells us it's relevant.

19 On the policy issue --

20 SPECIAL MASTER FOLSOM: Point me to any order
21 that Judge Gilstrap's previously entered granting the
22 request you're making here.

23 MS. DEGNAN: Yeah. So that's actually what I
24 was going to say. So this is the clear with computers
25 is the -- we understand that it is the exception and not

1 the rule. And we're -- that -- that's to the policy
2 point. We're not opening the floodgates on this. And
3 let us be very clear -- we are clear in our briefing --
4 we're not saying that Wi-LAN requires negotiation
5 documents in each and every single comparable license
6 analysis. We're not saying that. And I think when you
7 read Wi-LAN, it doesn't actually require that.

8 But it appears that in Netlist 1, the lack of
9 investigation into SK Hynix, lack of discovery into
10 SK Hynix and its state of mind in its negotiation with
11 Netlist was held against us. It struck our opinion.
12 And so given that, there was great prejudice to us if
13 our opinions are going to be struck because we haven't,
14 quote, put in any evidence, our expert hasn't reviewed
15 any evidence about why SK made the payment it did.

16 Mr. Sheasby has not said he's not going to move
17 to strike that opinion. He said he is. So we're going
18 to see a repeat of last time. And if Judge Gilstrap
19 used the Wi-LAN opinion in the same way, we will be
20 prejudiced for not seeking this discovery, giving it to
21 our expert, and letting her rely upon it.

22 SPECIAL MASTER FOLSOM: I think I asked you --
23 I'm not sure you cited to an order where
24 Judge Gilstrap's allowed for discovery of this category
25 of documents.

1 MS. DEGNAN: It was. It's -- and it's -- we
2 can have -- Mr. Compton, Slide E. This is the
3 Charles E. Hill opinion we cited in our briefs. And
4 that's at 854 F.Supp.2nd 427.

5 SPECIAL MASTER FOLSOM: Yeah. Let's hold on.
6 I will read the order.

7 And let's move on to the next -- next motion
8 that needs attention.

9 MS. DEGNAN: Sure. The next motion, I think,
10 is 142, which is -- which is -- is similar. It is
11 Netlist's motion. I don't want to steal Mr. Sheasby's
12 thunder, but it is very, very similar. We've narrowed
13 the dispute over whether SK Hynix needs to produce the
14 negotiations -- documents related to negotiation with
15 Netlist. We've narrowed that dispute. So it's very --
16 it's very similar to 139.

17 And here SK Hynix got the subpoena. It was
18 ready to produce them. In Exhibit 2 to Netlist's
19 motion, it specifically says we're ready to produce them
20 tomorrow, Netlist, under attorneys' eyes only, under the
21 protective order. And Netlist stopped the presses.
22 They stopped the production. So there's no burden here.
23 And given the relevance, we think that the motion for
24 the protective order should be denied.

25 SPECIAL MASTER FOLSOM: Response?

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1 MR. PAYNE: Yes, Your Honor. So this is a
2 parallel of the motion you just heard. There was
3 request to Netlist for the settlement negotiations with
4 SK Hynix. That's 139. There was also a subpoena to
5 Hynix for the same settlement negotiations. And we're
6 opposing both for the same reasons.

7 Your Honor did ask a question about prior
8 orders by Judge Gilstrap. I will say, in no prior of
9 the Netlist litigation has either Judge Gilstrap or
10 Judge Payne ordered production of the SK Hynix
11 negotiation documents. In fact, it's the -- it's the
12 opposite.

13 SPECIAL MASTER FOLSOM: Not necessarily
14 SK Hynix. I'm talking about other --

15 MR. PAYNE: I understand, Your Honor. And the
16 Charles E. Hill case, which Your Honor may be familiar
17 with, is --

18 SPECIAL MASTER FOLSOM: It's a him. But I
19 promise to read the order that's been mentioned.

20 MR. PAYNE: Okay. Yes, Your Honor.

21 There's a prior order by Judge Payne in the
22 Micron case. I think the Charles E. Hill case that was
23 mentioned, it's -- was a very different situation. I'm
24 happy elaborate on that, if you would like to hear it.

25 But on the -- on the SK Hynix protective order,

1 I think, Your Honor, here we don't think that the
2 SK Hynix negotiations are -- settlement negotiations are
3 discoverable for the reasons briefed in the papers.

4 If -- if Your Honor concludes otherwise, then
5 that production can come from Netlist, but there's no
6 reason to have it also come from a third party. But
7 certainly, if the materials are not discoverable from
8 Netlist -- and we don't believe they are consistent with
9 Netlist --

10 SPECIAL MASTER FOLSOM: So I think these two
11 issues dovetail to be somehow a rule of thumb --

12 MR. PAYNE: Yes, Your Honor, I think that's
13 correct.

14 SPECIAL MASTER FOLSOM: Okay. Short of a
15 reply, I think I understand this issue. Like I said --

16 MS. DEGNAN: If I could, one sentence?

17 SPECIAL MASTER FOLSOM: Sure.

18 MS. DEGNAN: I would say we disagree that, if
19 you agree with us, there's no need for SK Hynix to make
20 a production. It was standing by, ready and willing to
21 make, but for Netlist action. It's not entirely clear
22 that the documents in SK's position are going to be --
23 possession, custody, and control are going to be exactly
24 the same in Netlist. There's no burden whatsoever, and
25 we would disagree that we can just get them from

1 Netlist.

2 SPECIAL MASTER FOLSOM: I don't think the
3 issue -- and if memory serves me correct, there was some
4 criticism the motion was filed in an improper
5 jurisdiction. It shouldn't be filed in the Eastern
6 District of Texas. Am I correct?

7 If so, what -- what's Samsung's response to
8 that? And I'll give an opportunity to let Netlist
9 respond to that question.

10 MS. DEGNAN: Sure, Your Honor. I mean, we
11 stand by the position we took in the papers, which is
12 this is sort of an end run around of the proper
13 procedure forum.

14 Netlist did cite a couple of cases that
15 indicate that some of the -- some of the -- some cases
16 from East -- the District of Texas, it takes sort of a
17 broader view of their authority to handle this. And we
18 would have no objection to Judge Folsom, Your Honor,
19 handling -- handling both motions.

20 SPECIAL MASTER FOLSOM: Okay. Any comments on
21 that issue that --

22 MR. PAYNE: I think it's resolved by Samsung
23 counsel's statement, but I'll just add, Your Honor, it's
24 a motion for protective order, and Rule 26(c) expressly
25 says that a motion for protective order should be filed

1 in the court where the action is pending, which is, of
2 course, this court. So we believe it's properly filed.

3 SPECIAL MASTER FOLSOM: You think this is the
4 correct court then?

5 MR. PAYNE: Yes.

6 SPECIAL MASTER FOLSOM: Okay. Very well. Next
7 entry -- docket entry?

8 MS. DEGNAN: So I think that would be 199, and
9 that's Mr. Cordell's.

10 MR. PAYNE: And, Your Honor, this is -- this is
11 our Netlist motion. So I'll -- I'll start.

12 This motion again relates to discovery on the
13 SK Hynix negotiation, but it's a subissue, which is
14 there's a request to depose two former Netlist in-house
15 attorneys on the SK Hynix negotiations.

16 So I think the first part of it, Your Honor,
17 rises or falls with a ruling on the discoverability of
18 the license. But there's an additional issue here,
19 which I think is very important, which is, even if there
20 were documents that were discoverable, that does not
21 make a deposition of a party's attorneys appropriate.
22 That's -- that's disfavored in the Fifth Circuit and
23 this court, and there are many rulings that we've cited
24 in the papers, making clear that depositions of a
25 party's attorneys are not appropriate, except in very

1 narrow circumstances.

2 And those aren't -- those aren't present here.
3 These are former apex attorneys. They were the highest
4 in-house position at Netlist at the time they were
5 employed.

6 SPECIAL MASTER FOLSOM: Discovery on a previous
7 motion now; so we'll flip sides, so to speak.

8 Has there been a 30(b)(6) deposition on this
9 issue?

10 MR. PAYNE: There has, Your Honor. We produced
11 Mr. Hong, Netlist's CEO, as the 30(b)(6) on both the
12 SK Hynix and the JDLA. He was questioned extensively
13 about both, and there's been no suggestion at any point
14 that he was unprepared to answer questions or didn't
15 answer questions about either of them.

16 SPECIAL MASTER FOLSOM: Well, why is this
17 deposition -- are these depositions needed? Now, you're
18 sort of switching sides on this issue. I'm sure that
19 you'll say the facts are different, but --

20 MR. CORDELL: Is that directed to me,
21 Your Honor?

22 SPECIAL MASTER FOLSOM: Are you responding to
23 this motion?

24 MR. CORDELL: I am, yes. Ruffin Cordell for
25 Samsung.

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1 SPECIAL MASTER FOLSOM: So you are, basically,
2 to tie this up, flipping sides on this issue. I'm sure
3 the facts, you will say, are totally different, but --

4 MR. CORDELL: No, no. I think we're actually
5 all on the same side. And, again, I mean, we're --
6 we're sponsoring the discovery of this evidence. So
7 Ms. Degnan took you through why the Hynix documents that
8 Hynix had prepared and was ready to produce and was
9 ready to hand to us and then in comes Netlist as a --
10 essentially, as a third party to interfere with their
11 discovery obligations. I mean, that's -- that's just
12 outrageous. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] And so that
16 information is apart from what we can get from Hynix;
17 right? We're going to get the Netlist side of the
18 story.

19 And it is correct that, you know, attorneys
20 don't always get deposed or testify, although I was
21 doing some research into a case that you had years ago
22 where, I think, they called Isabella Fu to the stand in
23 a Microsoft case, which was a -- which was very --

24 SPECIAL MASTER FOLSOM: It's not fair to cite
25 back my orders --

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1 MR. CORDELL: Well, you -- I think the -- I
2 think they -- they resolved it before she took the
3 stand, but the reality is it does happen. And the --

4 SPECIAL MASTER FOLSOM: Why is a 30(b)(6)
5 deposition not sufficient?

6 MR. CORDELL: Well, because, as Mr. Sheasby
7 very eloquently pointed out earlier, he doesn't get to
8 pick the witnesses I depose. And the reality --

9 SPECIAL MASTER FOLSOM: That's why I said
10 you're on opposite sides of the issue now.

11 MR. CORDELL: Well, you're right about that.
12 And these two gentlemen, you know, they're lawyers, but
13 they were chosen by Netlist to be the negotiators. So
14 the fact that you hire somebody with a law degree to be
15 your negotiator or appoint them doesn't shield them from
16 discovery.

17 So they -- they will have unique information
18 about this negotiation that'll be very provocative. But
19 there's more here, in that [REDACTED]

20 [REDACTED]
21 [REDACTED] And Your Honor was sort of figuring
22 out about that this morning.

23 But the reality is that the JDLA is, for all
24 the reasons Mr. Sheasby offered, of great interest. We
25 think that it's really a California matter, but they're

1 making it a matter here. And all of the issues that
2 Mr. Sheasby previewed for us with respect to the
3 termination of the JDLA and whatnot falls four square --
4 full square on the -- on Mr. Whitley and Mr. Frechette.

5 SPECIAL MASTER FOLSOM: Yeah. Well, what
6 testimony would you seek from the in-house on the JDLA?
7 Scope? Termination? I mean, are you now trying to fit
8 termination into -- issue with these witnesses?

9 MR. CORDELL: Well, so Mr. Fourchette wrote --
10 wrote a letter stating that -- that Netlist did -- it
11 was involved in this process. But we're not -- we're
12 not really pressing them on the termination issue.
13 That's -- that's not their -- that's not their role
14 here. That's -- that's for California, and we want
15 to -- we want to keep that division very -- very bright.

16 SPECIAL MASTER FOLSOM: Okay. Reply?

17 MR. PAYNE: Yes, Your Honor. So a couple of
18 things. This isn't a case where the attorneys are the
19 only people who are knowledgeable about the license.
20 Mr. Hong was knowledgeable about the license and
21 testified about it.

22 SPECIAL MASTER FOLSOM: What was his
23 position -- refresh my memory --

24 MR. PAYNE: Excuse me, Your Honor?

25 SPECIAL MASTER FOLSOM: What was his position

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1 with Netlist, or what is it?

2 MR. PAYNE: The CEO, Your Honor.

3 SPECIAL MASTER FOLSOM: CEO. Okay.

4 MR. PAYNE: And -- and so there's -- there's no
5 basis for an additional deposition of the attorneys
6 which is -- which is --

7 SPECIAL MASTER FOLSOM: I thought that they
8 were taken already --

9 MR. PAYNE: I'm sorry?

10 SPECIAL MASTER FOLSOM: Has the deposition of
11 the CEO been taken?

12 MR. PAYNE: It has, Your Honor.

13 On the -- on the JDLA, I think Your Honor has
14 heard quite a bit on that issue, but I'll just
15 highlight, I think, there's a complete inconsistency in
16 the position, which is that Samsung is arguing in this
17 motion it should be allowed to take discovery from
18 Netlist on the JDLA but that Netlist should not able to
19 take discovery from Samsung on the JDLA. I just don't
20 think that that can be the rule, Your Honor.

21 SPECIAL MASTER FOLSOM: That went to my point
22 the parties are sort of taking opposite positions that
23 skilled lawyers are quite capable of doing, based upon
24 the facts of the two situations. But in any event, I
25 understand the issue.

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1 What do we have next?

2 MR. CORDELL: Well, maybe just to -- just to
3 tie it all neatly in a bow, Your Honor, we certainly
4 don't sponsor any testimony in this case as to the
5 termination of the JDLA. We think that's a hundred
6 percent a California issue.

7 SPECIAL MASTER FOLSOM: I think I know
8 everyone's position on that.

9 MR. CORDELL: Okay. Well, I just want to make
10 sure I'm not mis- --

11 SPECIAL MASTER FOLSOM: Yes. I'm quite clear
12 on that issue, but I guess you've reinforced it,
13 Mr. Cordell.

14 MR. SHEASBY: Your Honor, I think the last two
15 issues are two additional subpoenas that have been
16 served that we are seeking to quash, if I -- if memory
17 serves.

18 SPECIAL MASTER FOLSOM: What docket entries are
19 those, Mr. Sheasby?

20 MR. SHEASBY: Your Honor, I believe those are
21 Docket 202 and Docket 218.

22 SPECIAL MASTER FOLSOM: 202 and --

23 MR. SHEASBY: And 2- -- and 218 has been
24 withdrawn, and so all that's left today is 202.

25 SPECIAL MASTER FOLSOM: Okay. You may proceed.

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1 MR. CORDELL: Okay. I think 202 is mine, and
2 this is our motion to compel the deposition of
3 Dr. Hyun Lee. Dr. Lee is the only remaining inventor,
4 at least that's connected to the case, for the
5 patents-in-suit.

6 The facts were that he was deposed in the prior
7 case on a different patent that is related to the one in
8 this case, but it's -- we subpoenaed him. He's no
9 longer employed by -- by Netlist. However, at least as
10 of about a year ago, he was a consultant and had a
11 consultancy agreement with Netlist and was being paid by
12 Netlist.

13 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

20 The primary response we've gotten is, well,
21 Dr. Lee was deposed on a related patent and, therefore,
22 we should be able to just use his prior deposition.
23 I've read that deposition, Your Honor. It is remarkable
24 in that he -- he is a very difficult witness, to put it
25 mildly, and the examination that was done of him on --

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1 SPECIAL MASTER FOLSOM: Very difficult in what
2 regard, Mr. Cordell?

3 MR. CORDELL: You know, just basic questions,
4 Your Honor, that -- here I can -- I can share my screen.

5 SPECIAL MASTER FOLSOM: Oh, I don't know if I
6 necessarily need that. I just --

7 MR. CORDELL: We asked him, "You know, do you
8 consider yourself an employee of Netlist," and he gave
9 us a seven-sentence response, saying, "I don't know what
10 you're referring to. What -- you know, I don't know
11 what you mean when you say 'Netlist employee.' I'm here
12 to testify. And, you know, would it make me a Netlist
13 employee? As you mentioned, do you work on behalf of
14 Netlist? Truly I don't understand." And so we --

15 SPECIAL MASTER FOLSOM: That will go back to
16 the jury, Mr. Cordell.

17 MR. CORDELL: Well, that's true. That would be
18 useful to show a jury, but the notion --

19 SPECIAL MASTER FOLSOM: Maybe Mr. Sheasby or
20 someone on his team can better address.

21 Health issue -- is that an issue also in the --

22 MR. SHEASBY: Your Honor, I'm not arguing it,
23 but I know Dr. Lee personally, and so let me speak to
24 that.

25 Dr. Lee is a very sweet man. He doesn't speak

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1 English really well at all, and so he requires
2 translation. He's quite elderly, and he's had a number
3 of health issues. So I just --

4 SPECIAL MASTER FOLSOM: How do you define
5 "elderly," Mr. Sheasby?

6 MR. SHEASBY: I mean -- I mean, elderly in
7 terms of his sort of mental capacity and his -- and
8 he's -- he will openly admit that he's -- he's lost a
9 step or two since his wife died. And so the only reason
10 I want to flag is what Mr. Cordell says is irascibility
11 is really just someone who is -- who has lost a couple
12 of steps and doesn't speak English. That was the only
13 point I was trying to make.

14 SPECIAL MASTER FOLSOM: Full time allotted or
15 with -- since he's been previously deposed, or do you
16 think you need the full allowed under the rules, if I
17 grant the request?

18 MR. CORDELL: Your Honor, we had offered, I
19 think, to take four hours at some point and had gone
20 back and forth about that. But I've got to tell you,
21 having read the deposition, I really worry about that.
22 It is true that he was a translated deponent and that
23 certainly requires a lot more time. But in particular
24 with him, having read that transcript, I think we really
25 need the full seven hours.

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1 His -- I understand his English skills. And,
2 look, we represent Samsung; right? So we're -- we're
3 not going to throw bricks at anybody that needs a
4 translator. But Dr. Lee has been in this country for
5 over 50 years. He went to Michigan in the '70s. He got
6 two degrees from Michigan and one from Lehigh. He's
7 worked for Bell Labs and for Qualcomm and for, I mean, a
8 variety of companies for 50 years.

9 SPECIAL MASTER FOLSOM: That's not to his
10 English ability; so let's -- let's have a response, and
11 I'll give you a chance to reply.

12 MR. CORDELL: Sure.

13 MR. TEZYAN: I'll be responding for this one.
14 Michael Tezyan on behalf of Netlist.

15 SPECIAL MASTER FOLSOM: I guess, actually,
16 since the patents in Samsung 1 were not involved, these
17 are new patents in this case, why shouldn't they be
18 given the opportunity to take Dr. Lee's deposition?

19 MR. TEZYAN: It's a fair question. Let me
20 start out by clarifying that only one of the patents at
21 issue in this case is a patent on which Dr. Lee is a
22 coinventor. The other two patents before Your Honor,
23 the '912 and '417 patents, those have different
24 inventors.

25 One of those inventors is Mr. Jeffrey Solomon,

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1 and Samsung actually deposed Mr. Jeffrey Solomon in this
2 case. Right. So Dr. Lee doesn't have any unique
3 personal knowledge for the '912 and '417 patents. The
4 only argument --

5 SPECIAL MASTER FOLSOM: Can I ask that he
6 doesn't have knowledge, if that's case?

7 MR. TEZYAN: Well, it just means that since
8 they've deposed the other coinventor, it doesn't seem
9 like there's --

10 SPECIAL MASTER FOLSOM: So I'll just trust you
11 that he doesn't know anything about these topics?

12 MR. TEZYAN: Well, so one of the bases that
13 they've pointed to in their motion was that Dr. Lee is
14 Netlist's longtime chief technology officer; right? And
15 he just has this background about Netlist technology
16 that's relevant to not only the '608 patent but the
17 other patents as well.

18 And that was actually explored in the last
19 deposition too. I mean, on page 2 of our opposition, we
20 quote deposition testimony about the LRD/DxD projects
21 that he worked on at Netlist. Those are the projects
22 that spun off the other two patents, the '912 and the
23 '417. So, again, I just don't see a need justifying an
24 additional deposition, when a lot of this was covered in
25 the prior deposition and was covered by Samsung's

1 capable counsel.

2 And so the other point I'd like to make is
3 that, you know, in addition to his English-speaking
4 skills, Dr. Lee is not a lawyer; right? He was asked
5 several questions last time about the claims of the '506
6 patent, and his answers were that he just didn't
7 understand the claims because, one, he wasn't involved
8 in any of the prosecution of the '506 patent or any of
9 the patents in the family of the '506, which includes
10 the related '608 patent in this case.

11 And the other point is he just doesn't
12 understand the claims because of the way they're
13 written. They're very long claims. And as an engineer,
14 he just doesn't have the ability to parse out and
15 understand the claim language.

16 SPECIAL MASTER FOLSOM: I guess you have relief
17 from the hotline, if you want to make a call to whomever
18 is on duty.

19 MR. TEZYAN: Was that directed to Mr. Cordell
20 or to me, Your Honor?

21 SPECIAL MASTER FOLSOM: To you. I'm sure
22 Mr. Cordell would be happy to answer, but --

23 MR. CORDELL: I don't generally call the
24 hotline in my own depositions. It's --

25 SPECIAL MASTER FOLSOM: Anyway, tongue in

1 cheek, I understand the issue, and I'm certainly
2 inclined to grant the deposition in some fashion. I
3 guess, you can just decide if seven hours is appropriate
4 or not under the -- I guess, there's no opposition to
5 the deposition in the first case being used; is that
6 correct? Dr. Lee's first deposition?

7 MR. TEZYAN: That's correct, Your Honor.

8 SPECIAL MASTER FOLSOM: Yeah.

9 MR. SHEASBY: And, Your Honor, this is
10 Jason Sheasby. Just let me flag precisely what the
11 issue is.

12 Dr. Lee was retired by the time the patent that
13 they're focused on was filed. Dr. Lee was the head of a
14 research program from which a parent application was
15 filed and then a number of children have proliferated.
16 The parent applications were filed and a number of
17 children were proliferated. So they've had a full time
18 to ask him -- the full deposition time to ask him about
19 that research program.

20 The only thing that's left is specifically on
21 this one patent, and the idea that they need seven hours
22 to ask him about one patent that he wasn't even around
23 when it was -- when it was actually filed and he doesn't
24 understand claims, because he's not a lawyer, I think
25 that that's what Mr. Tezyan says is -- it seems that

1 it's strategic in a sense that taking a very elderly
2 witness, who has problems, and exposing him to a
3 seven-hour deposition --

4 SPECIAL MASTER FOLSOM: Well, that's why I'm
5 asking -- there's no opposition to the first deposition
6 being used in Samsung 2; is that correct?

7 MR. SHEASBY: Not at all. And this is the
8 first we've heard that he was nonresponsive. There was
9 never a motion made that he --

10 SPECIAL MASTER FOLSOM: I'm not -- that's not
11 my role in monitoring that deposition. It's already
12 taken place.

13 I'm inclined to grant it. I'll just decide on
14 it. I'm not inclined to give him seven hours under
15 these circumstances.

16 MR. CORDELL: So, Your Honor, if I could just
17 make one pitch. I mean, I appreciate Mr. Sheasby's
18 reassurances and Mr. Tezayan's reassurances, but at the
19 same time, in their motion to amend, they went well out
20 of their way to argue about how this patent covers
21 different subject matter from the prior one.

22 And, yes, we questioned him, in general, about
23 the prior patent, but these are different claims. It's
24 a different invention. It's --

25 SPECIAL MASTER FOLSOM: Understood.

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1 MR. CORDELL: -- by their own terms. We
2 didn't --

3 SPECIAL MASTER FOLSOM: Heard enough on this
4 issue.

5 Is that --

6 MR. CORDELL: Well, can I -- can I belabor it
7 one more moment, Your Honor, and suggest that, if need
8 be, we're happy to divide it up over two days. If he
9 needs a couple of sessions, because of his age or
10 infirmity, we can do shorter sessions over two days.
11 That's fine.

12 SPECIAL MASTER FOLSOM: If that's helpful, I
13 will -- like I said, I'm inclined to allow the
14 deposition. I will specify how much time. And if
15 Dr. Lee wants to divide the time over two days, I will
16 allow him to do so.

17 MR. CORDELL: Thank you.

18 SPECIAL MASTER FOLSOM: Okay? Does that
19 cover -- have we now addressed all the motions?

20 MR. SHEASBY: We have, Your Honor.

21 MR. McKEON: We have, Your Honor.

22 SPECIAL MASTER FOLSOM: Well, you -- you know,
23 I started to say you've given me back time, but it's
24 after lunch. No, I appreciate everyone's streamlining
25 this. Appreciate your comments. And I've got to commit

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1 to try to have an order out, you know, sometime in the
2 next week or so, realizing time is somewhat of the
3 essence. But I'll be seeing some of you next week.

4 With that in mind, I'm going to let some of you
5 go. It's not because -- I just want to have a little
6 smaller group to talk about another case that everyone's
7 involved in.

8 Mr. Sheasby, Mr. Baxter, Ms. Truelove,
9 Mr. Cordell, Mr. McKeon, and Ms. Smith, if you'll stay
10 on with me, I want to talk about another matter.

11 MR. SHEASBY: Yes, Your Honor.

12 SPECIAL MASTER FOLSOM: Okay. Everyone else,
13 have a pleasant day.

14 (The proceedings concluded at 10:05 A.M.)

15 * * *

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98

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF ORANGE)
3

4 I, Lena Mescall, Certified Shorthand Reporter,
5 Certificate No. 13018, for the State of California,
6 hereby certify:

7 I am the person that stenographically recorded
8 the transcript of proceedings held on Friday, January 5,
9 2024.

10 The foregoing transcript is a true record of
11 said proceedings.
12

13
14 Dated: January 8, 2024.
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18

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20
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